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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 5

[ET Docket No. 93-266; FCC 95-80]

Pioneer's Preference Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this Second Report and Order, the Commission modifies certain rules regarding its pioneer's preference program. This action is intended to increase the efficiency of the program by making it better comport with competitive bidding authority and the Commission's experience administering it.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 776-1622.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, adopted February 28, 1995, and released March 1, 1995. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Second Report and Order

1. In the Notice of Proposed Rule Making (Notice) in this proceeding, 58 FR 57578 (October 26, 1993), the Commission sought comment on whether and how the pioneer's preference rules could be amended to take into account competitive bidding and its experience administering them, or whether these rules should be repealed. In the Notice, the Commission proposed to eliminate the current policies of issuing public notices specifying pioneer's preference filing deadlines, considering raw experimental license material that relates to preference requests, and making initial determinations on preference requests. The Commission also proposed to limit acceptance of preference requests to services that use new technologies and proposed that preference requests be filed prior to a

notice of inquiry (NOI) in a proceeding that addresses a new service or technology, if such a document is issued in advance of a notice of proposed rulemaking (NPRM), rather than the current policy of allowing requests to be filed after an NOI but prior to an NPRM. In the First Report and Order, 59 FR 8413 (February 22, 1994), the Commission determined that it would not apply amendments to its rules to three proceedings in which tentative pioneer's preference decisions had been issued.

2. In the Second Report and Order, the Commission determined that the pioneer's preference program should be retained, but it decided to eliminate its current policies of issuing public notices specifying filing deadlines, considering raw experimental license material that relates to preference requests, and making initial determinations on preference requests. These requirements were originally imposed to ensure a complete record in all pioneer's preference proceedings, but the Commission said that eliminating them would result in a more efficient process with no detriment to the public. The Commission also adopted its proposal to require that preference requests be filed prior to an NOI, if such a document is issued in advance of an NPRM. The Commission stated that deferring the filing deadline to the NPRM stage in cases in which an NOI has been issued may encourage speculative preference requests. Finally, in response to comments to the Notice, the Commission required that any preference grant be conditioned on use of the technology and system for which the preference was awarded.

3. The Commission did not adopt its proposal to limit acceptance of pioneer's preference requests to services that use new technologies. It said that while a pioneer's preference should not be awarded simply for transferring technologies from existing services in one band to similar services in another band, a significant enhancement of an existing service, under some circumstances, could be achieved by combining existing technologies in new and innovative ways. The Commission also noted that the recently-enacted General Agreement on Tariffs and Trade (GATT) legislation provides that preferences be awarded for significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service.

4. Additionally, the Commission decided that in services in which licenses are assigned by competitive bidding, any parties receiving pioneer's

preferences will be required to pay for their licenses in accord with the payment formula specified in the GATT legislation. The GATT legislation mandates that recipients of preferences in service in which licenses are awarded by competitive bidding and whose requests were accepted for filing after September 1, 1994, pay in a lump sum or in installment payments over a period of not more than five years 85 percent of the average price paid for comparable licenses. The Commission said that it will also use this formula for any future grants of pioneer's preference requests accepted for filing on or before September 1, 1994 and—in accord with the GATT legislation—will determine comparable licenses on a case-by-case basis.

5. Accordingly, *it is ordered* That Parts 1 and 5 of the Commission's Rules are amended as specified below, effective 30 days after publication in the **Federal Register**. This action is taken pursuant to Sections 4(i), 7(a), 303(c), 303(f), 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), and 309(j).

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 5

Radio.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Amendatory Text

Parts 1 and 5 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Implement 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.402 of this chapter is amended by revising paragraphs (c), (d), (e), and (g), redesignating paragraph (f) as new paragraph (h), and adding new paragraph (f) to read as follows:

§ 1.402 Pioneer's preference.

* * * * *

(c) Pioneer's preference requests relating to a specific new spectrum-based service or technology will not be

accepted after the Commission's Sunshine Notice is issued announcing initiation, by either a notice of inquiry or notice of proposed rule making that will be considered by the Commission at a public meeting, of a proceeding pertaining to that service or technology. Alternatively, if the Commission initiates a new proceeding pertaining to a specific new spectrum-based service or technology by notation, pioneer's preference requests will not be accepted after such notice is submitted to the Commission for vote.

(d) Pioneer's preference requests complying with the requirements and procedures in paragraphs (a) through (c) of this section will be accepted for filing and listed by file number in a notice of proposed rule making addressing the new service or technology proposed in the request, if such a notice of proposed rule making is adopted. A final determination on a request for pioneer's preference and its scope will normally be made in a report and order adopting new rules for the service or technology proposed in the request, if such rules are adopted. If awarded, the pioneer's preference will provide that the preference applicant's application for a construction permit or license will not be subject to mutually exclusive applications. If granted, the construction permit or license will be subject to the conditions in paragraphs (f) and (g) of this section.

(e) Any interested person may file a statement in support of or in opposition to a request for pioneer's preference listed in a notice of proposed rule making, and a reply to such statements, subject to filing deadlines that shall be published in the notice of proposed rule making. Statements on the merits of pioneer's preference requests must be filed separate from, and not part of, any comments on the rules proposed in the notice of proposed rule making. Statements on pioneer's preference requests will not be accepted prior to issuance of the notice of proposed rule making.

(f) As a condition of its license grant, a pioneer's preference grantee will be required to construct a system that substantially uses the design and technologies upon which its pioneer's preference award is based within a reasonable time, as determined by the Commission, after receiving its license. Failure to comply with this provision will result in revocation of the pioneer grantee's license, and transfer of the license will be prohibited until this requirement is met.

(g) In services in which licenses are assigned by competitive bidding, any parties receiving pioneer's preferences

will be required to pay for their licenses in accord with the payment formula specified in the General Agreement on Tariffs and Trade legislation, Public Law 103-465. This formula requires that pioneers pay in a lump sum or in installment payments over a period of not more than five years 85 percent of the average price paid for comparable licenses. Comparable licenses will be determined by the Commission on a case-by-case basis.

* * * * *

3. Section 1.403 is revised to read as follows:

§ 1.403 Notice and availability.

All petitions for rule making (other than petitions to amend the FM, Television, and Air-Ground Tables of Assignments) meeting the requirements of § 1.401 will be given a file number and, promptly thereafter, a "Public Notice" will be issued (by means of a Commission release entitled "Petitions for Rule Making Filed") as to the petition, file number, nature of the proposal, and date of filing. Petitions for rule making are available at the Commission's Dockets Reference Center (1919 M Street NW., Room 239, Washington, DC).

PART 5—EXPERIMENTAL RADIO SERVICES (OTHER THAN BROADCAST)

1. The authority citation for part 5 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

2. Section 5.207 is revised to read as follows:

§ 5.207 Experiments performed in conjunction with pioneer's preference applications.

An applicant for a pioneer's preference pursuant to § 1.402 of this chapter may file an experimental license application for a limited geographical area, generally including no more than one Metropolitan Statistical Area. In order to be eligible for a preference at the time of a report and order in a proceeding addressing a new service or technology, the experimental applicant must demonstrate the technical feasibility of its proposal by summarizing its experimental results in its preference application, unless it instead submits an acceptable showing of technical feasibility. If a pioneer's preference applicant wishes the Commission to consider in conjunction with the application experimental material filed subsequent to the

application, the applicant must summarize this material and submit the summary to the Commission prior to the Sunshine Notice announcing that a report and order pertaining to the new service or technology will be considered by the Commission at a public meeting, or—if a report and order is considered by notation—prior to submission of the report and order to the Commission for vote. All experimental material must be summarized and its relevance to the pioneer's preference application explained in order for it to be considered by the Commission.

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47 CFR Part 61

[CC Docket No. 90-132; FCC 95-2]

Competition in the Interstate Interexchange Marketplace

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Memorandum Opinion and Order, the Commission responded to petitions for reconsideration filed in response to the Interexchange Order addressing the remaining issues raised on reconsideration. The Interexchange Order examined the state of competition in the interstate interexchange marketplace. At that time, the Commission concluded that most business services were subject to substantial competition, and therefore lifted or streamlined certain regulatory restrictions on AT&T and other Interexchange Carriers (IXCs). In this Memorandum Opinion and Order, the Commission generally affirmed the various regulatory reforms adopted in the Interexchange Order, with certain minor clarifications and modifications.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: Kevin Werbach at (202) 418-1580, Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration adopted January 3, 1995, and release February 17, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M